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**GOVERNMENT'S ROLE
IN PRICING FLUID MILK
IN THE UNITED STATES**

AGRICULTURAL ECONOMIC REPORT NO. 229

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Abstract

In 1971, the Federal marketing order system regulated 81 percent of the Nation's fluid milk sales, compared with over 50 percent in 1955. During 1971, 141,318 producers delivered 67.9 billion pounds of milk to Federal order handlers—more than 60 percent of all milk sold to plants and dealers. The farm value of this milk was \$4.2 billion. Thirty-seven States administer milk distribution in one or more of the following ways: Establish minimum prices at the farm, wholesale, or retail levels; regulate trade practices; or permit milk promotional programs financed through producer or handler assessment or appropriation.

Keywords: Government programs, Federal market orders, State government, marketing practices, market orders, milk marketing.

Preface

This publication supersedes Agricultural Economic Report No. 152, Government's Role in Pricing Fluid Milk in the United States (issued December 1968), and is the seventh in a series that started in 1950. These reports have been made cooperatively by the Economic and Statistical Analysis Division, Economic Research Service (ERS), and the Dairy Division, Agricultural Marketing Service (AMS), or their predecessors in the U.S. Department of Agriculture.

The sections on State controls are based on a survey of State departments of agriculture and State milk control agencies and a review of State milk control laws.

The section on Federal milk marketing orders was prepared by the Dairy Division, AMS, which administers the orders.

In general, this report is a résumé of regulation at the beginning of 1971. However, important changes through 1971 have been noted, as reported by trade sources or the States. Significant legislation or litigation that took place since 1968 affecting State controls is also reported.

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Summary

In 1971, 81 percent of the Nation's fluid milk sales were regulated under 62 Federal orders, compared with only slightly over 50 percent in 1955. In the same year, 141,318 producers delivered nearly 70 billion pounds of milk to Federal order handlers—about 60 percent of all milk sold to plants and dealers. The farm value of this milk was \$4.2 billion. Although there were fewer producers than in 1950, the amount of milk delivered daily per producer in 1971 averaged 1,316 pounds—a fourfold increase over the 326-pound daily average in 1950.

More than 95 percent of all fluid milk is priced under State control laws or Federal marketing orders. Government's role in milk pricing arose in the early 1930's, when many States passed laws to stabilize milk markets and thus raise farm prices. With the passage of the Agricultural Marketing Agreement Act of 1933, the Federal Government entered milk pricing; its regulation has, by request of producers, continued to increase ever since. A 1971 amendment to the act authorized promotional and educational programs for milk when approved and paid for by Federal order producers. A number of States have separate legislation authorizing milk pro-

motion programs. Three States—New Hampshire, West Virginia, and Wisconsin—support such programs with appropriated funds, but in most States, promotion programs are financed by producer or handler assessment.

In December 1971, 1,538 handlers were regulated in Federal order markets; their receipts amounted to 5.5 billion pounds for the month. In December 1961, in contrast, there were 2,314 handlers, with receipts totaling 4.2 billion pounds. Federal orders establish only the minimum class prices that dealers pay to producers.

Many States also regulate wholesale and retail prices. In 1971, 18 States and Puerto Rico were establishing producer prices; 16 States were authorized to set wholesale prices; and 13 States were authorized to set retail prices. Trade practice laws were in effect in 28 States and Puerto Rico; in addition, 10 States without authority to set prices had laws prohibiting the sale of milk below cost.

Milk price control methods, extent of trade practice regulation, milk promotional activities, and legislation and litigation in effect since 1968 and affecting distribution are described for the States that have these activities and items.

Government's Role in Pricing Fluid Milk in the United States

by

A. G. Mathis, D. E. Friedly, and S. G. Levine¹

Background of Government Regulation

As the modern U.S. fluid milk industry evolved, dairying split into a farm sector, a processing sector, and a sales sector. With this splitup, inequities in bargaining power developed between farmers and processors; between processing plants and stores or customers; and between stores and consumers. These problems worsened in the early 1930's, and a solution was sought in some areas by initiating controls on fluid milk pricing. This report explains the conditions that led to government intervention and reports the present status of control.

Market Characteristics

Milk production varies daily and seasonally, as does demand. However, the production rate cannot be adjusted and, because milk is perishable, fluid supplies cannot be stored to achieve a balance with demand. The producer is under strong economic pressure to promptly and regularly deliver his milk to market, regardless of price. This circumstance makes dairy farmers especially vulnerable to seasonal changes in milk prices and net income. Thus, they especially need programs that help them overcome an intrinsic lack of bargaining power.

Enactment in the 1920's of more rigid State sanitary regulations for fluid milk contributed to the problems faced by dairy farmers. After these sanitary regulations were imposed, dairy producers wanted assurance of a year-round market

for their milk.

To cope with the complex problems of milk marketing and to strengthen their bargaining position, producers expanded their cooperative organizations and developed the techniques of classified pricing and pooling producer returns. In classified pricing, milk for fluid use is priced at one level, and milk for manufactured product use is priced at a lower level.

Institutional and Economic Changes

Dynamic changes in the production and marketing of milk create increased demand by producers and others in the dairy industry for government participation in milk pricing. The changes that affect marketing are both institutional and economic.

The number of distributing firms handling fluid milk has decreased sharply since the 1930's, and the size of these remaining firms has increased. Accompanying these institutional changes has been a rise in the size of producer cooperative marketing associations.

Many economic changes in milk marketing begin as technological developments. Examples are more efficient production and handling of milk on farms and, perhaps even more important, improved facilities for handling and trucking milk from farms to processing plants and finally to consumers. Such developments have broadened individual market areas and have increased competition from different points of production and consumption. Much milk moving to fluid markets now flows across State lines. Since a State cannot regulate producer prices for milk which comes from outside its borders, the

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Table 1.—States controlling producer and resale prices for milk, 1933-72¹

Year	Number of States controlling—		Year	Number of States controlling—	
	Resale prices	Producer prices		Resale prices	Producer prices
1933	7	9	1953	13	16
1934	13	16	1954	13	17
1935	21	18	1955	12	16
1936	16	20	1956	11	16
1937	18	21	1957	11	16
1938	16	20	1958	12	16
1939	17	20	1959	14	15
1940	17	20	1960	13	16
1941	15	19	1961	14	19
1942	14	16	1962	13	19
1943	14	16	1963	14	20
1944	14	16	1964	15	20
1945	14	16	1965	14	21
1946	14	16	1966	15	21
1947	14	16	1967	15	21
1948	13	16	1968	15	19
1949	12	16	1969	15	19
1950	12	16	1970	15	18
1951	12	16	1971	14	18
1952	12	16	1972	14	18

¹ Source—ERS, Marketing Economics Division. Excludes Puerto Rico, which has had producer and resale price control since 1957.

growth of interstate milk shipments has increased demand for Federal marketing orders. While orders are established and maintained for specified marketing areas, the increased mobility of milk shipments requires increased attention to regional and national conditions in developing the provisions of an order.

Development of Government Participation

Government participation in pricing fluid milk was widely inaugurated in the early 1930's to aid producers whose prices sharply decreased

during the depression. A number of States enacted legislation to stabilize milk markets in an attempt to raise milk prices (table 1). Some have ceased regulation; other States have since enacted controls. The Federal Government entered fluid milk pricing following passage of the Agricultural Adjustment Act of 1933.

Since their initiation in the 1930's, the combined scope of State laws and Federal milk orders has expanded immensely. At present, more than 95 percent of the milk meeting sanitary standards for fluid use is priced under one or both of them.

Federal Milk Marketing Orders

Federal authority to regulate milk handling and participate in the price-determining process was first provided in the Agricultural Adjustment Act of 1933. The Agricultural Adjustment Act of 1935 expanded and made more explicit the authority of the U.S. Department of Agriculture (USDA) to fix minimum prices for milk. Current Federal orders, however, are based on the Agricultural Marketing Agreement Act of 1937, as amended. This act reenacted the 1935 legislation, which spelled out in detail the general authority granted by the 1933 legisla-

tion; decisions made by the Supreme Court had cast doubt on the validity of the 1935 legislation.

The system of Federal milk orders expanded steadily for nearly 30 years—from 20 milk orders in 1940 to 83 in 1962. During the next 9 years, the marketing area under regulation continued to grow. But the addition of 9 new orders, consolidation of 26 orders with other orders, and the termination of 4 orders reduced the number of orders to 62 at the end of 1971 (table 2).

Table 2.—Measures of growth in Federal milk order markets, selected years

Year	Mar- kets (1)	Handlers (1)	Producers (2)	Producer milk deliveries				Prices per cwt. at 3.5 percent butterfat content ⁴		Daily deliv- eries per producer	Gross value of milk sales per producer ⁵
				Volume	Propor- tion of all farm milk sold ³	Portion used in Class I	Propor- tion used in Class I	Class I	Blend		
	No.	No.	No.	Mil. lb.	Pct.	Mil. lb.	Pct.	Dol.	Dol.	Lb.	Dol.
1938	⁶ 10	—	—	—	—	—	—	—	—	—	—
1940	17	—	⁹ 99,386	⁹ 9,095	⁷ 19.3	—	—	—	—	—	—
1945	26	—	123,161	13,209	19.2	—	—	—	—	—	—
1950	39	1,101	156,584	18,660	25.1	11,000	58.9	4.51	3.93	326	4,914
1955	63	1,483	188,611	28,948	31.8	18,032	62.3	4.67	4.08	420	6,510
1960	80	2,259	189,816	44,812	43.1	28,758	64.2	4.88	4.47	648	10,482
1961	81	2,314	192,947	48,803	45.0	29,859	61.2	4.91	4.45	704	11,131
1962	83	2,258	186,468	51,648	46.7	31,606	61.2	4.80	4.14	761	11,854
1963	82	2,144	176,477	52,860	47.5	32,964	62.4	4.78	4.15	821	12,814
1964	77	2,010	167,503	54,447	47.7	33,965	62.4	4.87	4.23	888	14,174
1965	73	1,891	158,077	54,444	48.3	34,561	63.5	4.93	4.31	944	15,300
1966	71	1,724	145,964	53,012	48.3	34,805	65.7	5.55	4.95	994	18,526
1967	74	1,650	140,657	53,761	49.1	34,412	64.0	5.85	5.17	1,056	20,321
1968	67	1,637	141,623	56,444	51.9	36,490	64.6	6.23	5.53	1,089	22,561
1969	67	1,628	144,275	61,026	56.2	39,219	64.3	6.50	5.74	1,164	24,892
1970	62	1,566	143,411	65,104	⁸ 59.0	40,063	61.5	6.74	5.95	1,244	27,625
1971 ⁸	62	1,538	141,318	67,855	60.6	40,246	59.3	6.90	6.08	1,316	29,891

— = No data available.

¹ End of year. (Date on which pricing provisions became effective.)

² Average for year.

³ Whole milk sold by farmers to plants and dealers.

⁴ Prices are simple averages for 1947-61 and weighted averages for 1962-67.

⁵ At blend prices adjusted for butterfat content.

⁶ In addition, 16 licenses.

⁷ Data for 6 markets: Boston, New York, Chicago, New Orleans, Omaha-Council Bluffs, and Toledo.

⁸ Preliminary.

In 1955, the Federal order system regulated more than half the Nation's fluid grade milk marketings for the first time. The system has continued to grow until it now covers about 81 percent of fluid marketings. In 1955, milk regulated under Federal orders was about 32 percent of all milk (fluid grade and manufacturing grade milk) marketed; in 1971, it was more than 60 percent. Figure 2 shows the wide scope of Federal orders (See center spread, pp. 14-15).

Major Characteristics

A Federal milk marketing order is a legal instrument issued to regulate the terms under which milk dealers (called handlers) selling milk within a specified geographic area purchase milk from farmers (producers). Federal orders require that handlers pay producers specified minimum prices which vary according to the use of the

milk. Wholesale and retail prices for fluid milk, unless set specifically by State authority, are established by handler competition. Sanitary regulations are established and administered by State and local health authorities. Federal milk orders do not fix wholesale and retail prices for fluid milk or establish sanitary regulations covering fluid grade (Grade A) milk.

Procedure for Developing a Federal Order

The sequence of steps in instituting a milk marketing order is as follows:

1. Action usually is initiated by a cooperative association (or group of producers) which petitions the Secretary of Agriculture for an order.
2. A preliminary investigation is then made to determine whether an order would fulfill the purpose of the 1937 act, whether an order would receive sufficient producer support, and whether

the proponents have sufficient information and resources for proceeding to a hearing.

3. If it is decided to proceed, counter-proposals are invited. A notice of a public hearing, including the proposed order and other proposals, is issued and published in the Federal Register. At the same time, USDA issues a press release announcing the hearing. Copies of the hearing notice are mailed to Governors of States concerned with the proposed order and to other interested persons.

4. At the hearing, all interested parties are given an opportunity to present information on:

- a. Aspects of interstate commerce in milk in the proposed marketing area,
- b. the need or desirability for an order, and
- c. specific terms of any order which might be issued.

5. Based on testimony at the hearing, a recommended decision and a recommended order are drawn up and issued.² These documents are published in the Federal Register.

6. A period of time, usually 15 to 30 days, is allowed for examining the proposal and filing exceptions.

7. These exceptions are considered, and changes are made as deemed necessary or desirable.

8. The final decision and final order are issued by the Secretary and published in the Federal Register.

9. The order becomes effective at a date specified by the Secretary, after approval by at least two-thirds of the voting producers who supplied milk to the area (or, if the order provides for individual handler pools, by three-fourths of the producers) during a representative period before issuance of the final order. The 1937 legislation provides that a milk producers' cooperative may bloc-vote for or against a proposal.³

Orders usually are amended in the same manner as original orders are developed and issued. To meet emergency situations, all or part of an order may be suspended. An order must be terminated at the request of more than 50 percent of the producers supplying more than

50 percent of the milk for the market, or by the Secretary if he finds the order no longer carries out the purposes of the legislation.

In recent years, orders have been largely amended as a result of regional and national hearings, because individual milk markets are becoming increasingly affected by adjacent or distant markets. For this reason, a change in one order, particularly a change in price, affects the supply-demand balance of milk in other markets, unless related changes are made in the affected market orders.

Administration of Federal Milk Orders

The Federal milk order program is administered by USDA's Agricultural Marketing Service, Dairy Division. The division carries out the procedures leading to the issuance and amendment of Federal milk orders. It keeps its procedures from one order to the next as consistent as possible.

When a Federal milk order is issued, the Secretary of Agriculture appoints a market administrator to administer the terms of the order. The market administrator establishes an office and employs a staff to assist him in: (1) calculating minimum prices in accordance with the order provisions; (2) collecting reports from handlers on quantities of milk received and the amount used in each product; (3) verifying handlers' reports and the size of payments made to producers; and (4) publishing market information which benefits handlers and producers.

The market administrator's expenses for administering the order are paid by handlers who are assessed a specified rate for milk handled. This rate varies among markets. In addition, most market administrators verify weights, perform butterfat tests, and provide marketing information to producers who are not members of cooperative associations. Nonmember producers are assessed for these services. Cooperative associations perform these services for their members.

A number of Federal milk order features, often overlooked, have contributed to the success of the program: (1) the hearing procedure, which provides opportunity for all parties to be heard; (2) the existence of a professional staff to appraise industry proposals and develop pricing and regulatory provisions; (3) price decisions made in the public interest by a public agency; (4) enforcement of marketing rules in accordance

² Testimony may result in a recommended decision for no order.

³ Under bloc voting, a cooperative may vote for all of its members at one time.

with order provisions; and (5) development of a large body of statistical information concerning market supplies, demand, price, and movement of milk.

Pricing Systems Established by Federal Orders

The Agricultural Marketing Agreement Act authorizes the Secretary of Agriculture to price milk under Federal orders according to the use made of the milk. Milk for fluid use is placed in Class I, the highest price class. Class I generally includes whole milk, skim and low-fat milks, milk drinks, flavored milk, and buttermilk. In most markets, milk used in manufactured products is placed in one or two lower price classes. In markets where three classes exist, the intermediate class generally includes cottage cheese.

The concept of equating supply with demand for fluid milk in a marketing area is the primary standard for establishing Class I (fluid use) prices. Minimum prices for Class I milk are established at levels which will assure consumers an adequate supply of pure and wholesome milk.

Milk not used for fluid purposes is priced at levels approximating the prices paid at unregulated plants that manufacture dairy products, such as butter and cheese. This milk (usually Class II) is priced lower than milk sold for fluid use. Farmers receive a weighted average or "blend" price for milk that reflects the amount of milk used for fluid consumption and for manufacturing purposes.

Relationship of Federal Order Prices to Dairy Support Prices

All Federal orders derive their Class I price from the value of milk for manufacturing—the Minnesota-Wisconsin price series. All surplus-class prices are based on manufacturing milk prices or the prices of manufactured dairy products. The price support level for manufacturing grade milk directly affects the Minnesota-Wisconsin manufacturing grade milk price series and prices for manufactured dairy products. Federal order class prices, as well as blend prices to producers, thus respond to changes in the level of support prices.

Class I Pricing

The foundation of the pricing system for Federal orders is the Minnesota-Wisconsin price.

This price, which is announced monthly by USDA, is an estimate of the average price paid by unregulated handlers for manufacturing grade milk in the two States. Changes in prices for manufacturing grade milk are considered to be a good measure of changes in the overall supply-demand balance in the dairy economy. Thus, the Minnesota-Wisconsin price series is used as the basic price for computing or adjusting Class I prices for all Federal orders.

The differential by which the Class I price exceeds the Minnesota-Wisconsin price is determined for each market on the basis of evidence presented at a public hearing. The Class I differential reflects the added cost of producing milk eligible for fluid use and transportation costs, consumption and supply in the market, prices in surrounding markets, competition for supplies and sales of fluid milk, and other economic factors. The differential is designed to create price levels which, over time, will provide adequate but not excessive supplies of fluid milk relative to demand.

In December 1971, the lowest Class I price in Federal order markets was in the Minneapolis-St. Paul order and in the Southeastern Minnesota-Northern Iowa (Dairyland) order. In these markets, the Class I price was \$1.06 a hundred-weight over the November 1971 Minnesota-Wisconsin price. The highest Class I price for December 1971 was in the Corpus Christi order, where it exceeded the Minnesota-Wisconsin price for the previous month by \$3.07.⁴

Surplus Pricing

About half of the Federal orders use the Minnesota-Wisconsin price as the surplus class (manufacturing grade) price (table 3). Some orders employ a dairy product price formula, which reflects what a processor can pay for raw milk after considering the selling price of the finished product and processing costs. The surplus price derived by this type of formula is usually computed by multiplying prices for butter and nonfat dry milk by yield factors to obtain the gross return per hundred pounds of milk for the expected end product. A manufacturing allowance is then deducted to obtain the net return which reflects the value of the milk to handlers.

⁴ Under a recent amendment, Class I prices in Federal order markets are based on the Minnesota-Wisconsin prices for 2 months earlier.

Table 3.—Methods used for surplus class pricing in Federal milk orders, January 1, 1972

Marketing area	Class II ¹	Class III ¹	Price used for classes with alternatives	Marketing area	Class II ¹	Class III ¹	Price used for classes with alternatives
Appalachian	2,4	—	High	Minnesota-N. Dakota	1	—	—
Austin-Waco	4,5	—	High	Mississippi	1,4	—	High
Black Hills	1,4	—	Low	Nashville	1	—	—
Boston Regional	1,4	—	Low	Nebraska-Western Iowa	1	1	—
Cedar Rapids-I.C.	1	—	—	Neosho Valley	1	—	—
Central Arizona	4	4	—	New Orleans	1,4	—	High
Central Arkansas	1	—	—	New York-New Jersey	1,4	—	Low
Central Illinois	1	—	—	North Central Iowa	1	—	—
Central West Texas	4	5	—	North Texas	4,5	—	High
Chattanooga	1	—	—	Northern Louisiana	1,4	—	Low
Chicago Regional	1	—	—	Ohio Valley	1	1,4	Low
Connecticut	1,4	—	Low	Oklahoma Metropolitan	3	—	—
Corpus Christi	4	4	—	Oregon-Washington	1,4	1,4	Low
Des Moines	1	—	—	Paducah	1	—	—
Duluth Superior	4	—	—	Puget Sound	1,4	1,4	Low
Eastern Colorado	1	1	—	Quad Cities-Dubuque	1	—	—
Eastern Ohio-W. Pa.	1	1,4	Low	Red River Valley	3	—	—
Eastern South Dakota	1	—	—	Rio Grande Valley	4	—	—
Fort Smith	1	—	—	St. Louis-Ozarks	1	—	—
Georgia	1	—	—	San Antonio	4,5	5	High
Great Basin	4	1	—	South Texas	1,4	—	Low
Indiana	1,4	—	Low	Southeastern Florida	1	4	—
Inland Empire	4	4	—	S.E. Minnesota-N. Iowa	1	—	—
Kansas City	1	1	—	Southern Illinois	1	—	—
Knoxville	1	—	—	Southern Michigan	1,4	1,4	Low
Louis.-Lex.-Evans.	1	—	—	Tampa Bay	1	—	—
Lubbock-Plainview	4	—	—	Texas Panhandle	4	—	—
Memphis	1	—	—	Upper Florida	1	—	—
Michigan Upper Peninsula	1	—	—	Upstate Michigan	1,4	4	Low
Middle Atlantic	1,4	—	Low	Western Colorado	1	1,4	Low
Minneapolis-St. Paul	1	—	—	Wichita	1,4	1,4	Low

— = Not applicable.

¹ Codes are as follows:

1. Based on Minnesota-Wisconsin manufacturing milk price.
2. Based on local plant average.
3. Based on U.S. manufacturing milk price.
4. Based on price of butter-powder.
5. Based on price of Wisconsin "Barrel" Cheddar cheese.

A third group of markets bases the surplus class price on whichever is lower—a product formula price or the Minnesota-Wisconsin price. Since significant quantities of surplus milk in some Federal order markets are used to make butter and nonfat dry milk, the butter-powder alternative gives some assurance to Federal order handlers that they will not experience undue losses if the Minnesota-Wisconsin price, which reflects prices paid at cheese plants as well as butter-powder plants, significantly exceeds the value of milk used to make butter and nonfat dry milk.

Federal orders that have two surplus classes

for manufactured products generally use the Minnesota-Wisconsin price as the Class III price and add a specified amount (about 15 cents per hundredweight) to determine the Class II price.

Prices Received by Producers

Producers receive an average or blend price based on the total value of all milk deliveries. The value of milk in each class is found by multiplying the quantity of milk in the class by the class price. The total value of milk in all classes is divided by the total pounds of milk deliveries to obtain the blend price payable to an

individual farmer. The blend price may be computed separately for each handler (individual handler pool) or it may be averaged for all handlers in the market (marketwide pool). Currently, five orders operate with individual-handler pools; the other 57 use marketwide pools.

Producer-Settlement Fund

In a marketwide pool, all producers receive the same uniform or blend price, adjusted for butterfat content and the distance the plant receiving the milk is from the farm. The uniform price reflects the average value of milk used by all handlers in the pool. Handlers with more Class I use than the average for the market must pay into a producer-settlement fund. Handlers having less Class I use than the market average draw from this fund. The function of the producer-settlement fund is to transfer payments among handlers so that all handlers are able to pay the same uniform price to producers. The fund is authorized by the order and maintained by the market administrator.

Seasonal Production Plans

A problem in pricing milk arises because seasonal variation in milk production is greater than seasonal variation in demand. Two plans have been used to obtain more even production (table 4).

One seasonal base plan employed under Fed-

eral orders is the base-excess price approach. Under this plan, each year every producer establishes a base equal to his average daily delivery of milk during the low-production season for his market. The base-forming period is specified in the order and need not be limited to 1 year. During the base-paying months, a producer is paid a higher price for the portion of his milk that does not exceed his base, and a lower price (approximately equal to the surplus class price) for deliveries that exceed his base.

The other seasonal production plan is the Louisville (takeout and payback) plan. Under this system, part of the payments due producers is withheld from the blend price in the flush season. In each of several fall months, a proportion of the total amount withheld is repaid to producers according to the total deliveries made during the month. Table 4 shows Federal order markets which have a base-excess or Louisville plan.

Class I Base Plans

The Food and Agriculture Act of 1965 as extended and revised by the Agricultural Act of 1970 provides that producer bases may be applied to higher valued fluid sales. Deliveries by a producer in excess of his base are priced at the surplus rate. The legislation requires that a separate referendum be held on base plans and prohibits bloc voting by cooperatives. Other provisions of an order are not affected if a Class I base plan is disapproved by producers. The expiration date of the revised Class I base plan authority is December 31, 1973. However, Class I base plans issued prior to this date may continue in effect through December 31, 1976.

The present authority provides flexibility in the determination of bases, guarantees that new producers will be assigned bases within 90 days, and permits producers historically associated with a market to share in additional bases made available by increased sales or base forfeitures. A moving base period allows for expansion of production units and permits new dairy farmers to earn bases over some designated time. Bases may be reduced for failure to deliver enough base milk to assure sufficient supplies of Class I milk, and bases may be allocated without regard to market expansion to alleviate hardship cases and provide for new producers. The Puget Sound milk order, the only Federal milk order

Table 4.—Federal milk marketing orders with seasonal plans, January 1, 1972

Louisville plan ¹	Base-excess plan
Boston Regional	Central Arkansas
Central Illinois	Chattanooga
Connecticut	Fort Smith
Eastern Ohio-Western Pennsylvania	Georgia ²
Indiana	Kansas City
Louisville-Lexington-Evansville	Memphis
Nebraska-Western Iowa	Middle Atlantic
New York-New Jersey	Nashville
Ohio Valley	Puget Sound
Paducah	Southern Michigan
St. Louis-Ozarks	
Southern Illinois	

¹ Also called "takeout and payback" plan.

² The order was amended to drop the base-excess plan and add a Class I base plan, effective March 1, 1972.

which included a Class I base plan authorized by the Food and Agriculture Act of 1965, was amended on July 1, 1971, to comply with the Agricultural Act of 1970. The Georgia order was amended, effective March 1, 1972, to include a Class I base plan. Several other markets are considering Class I base plans.

Promotional, Educational, and Research Programs

A 1971 amendment to the Agricultural Marketing Agreement Act authorized promotional, educational, and research programs on a market-by-market basis when approved by producers. These programs would be financed by deductions (checkoffs) from payments on all producer milk marketed under a marketing order. The legislation requires that such funds be paid to an agency organized by milk producers and associations of producers, and that a separate referendum be held on promotion sections. Other parts of any order are not affected if promotion deductions are disapproved by producers. Adjustments or credits may be made for mandatory checkoffs authorized under a State law for advertising or marketing research. Refunds of producer deductions are made when requested by any producer. The Middle Atlantic order was amended to authorize promotion checkoffs on deliveries made after May 1, 1972. Several other markets are considering similar promotion provisions.

Significant Trends in Federal Order Markets

The fluid milk industry has changed dramatically since the Federal order program began. The program has had to remain flexible to achieve the basic purpose of the enabling act—orderly milk marketing in the public interest.

Marketing Area Changes

Before World War II, fluid milk markets were relatively well defined and local. Fluid milk—then as now—was bulky and perishable. Technology in milk collection, processing, and distribution at that time generally confined a distributor's fluid sales to a single urban area. Thus each market was sheltered from supply-demand situations in other markets. However, the marketing situation has changed considerably in recent years.

Milk can now move from farms or plants via large bulk tank trucks over superhighways to

distant markets. For example, in 1970, Wisconsin producers delivered milk to plants regulated under 14 Federal orders in 12 States. In October 1970, milk was shipped from plants regulated under the Chicago Regional Order to plants regulated under 18 other Federal orders in 16 States. In addition, changes in processing and packaging technology, along with increased distribution through stores, have led to the establishment of centralized bottling and distribution plants serving several markets. Economies of scale associated with such operations more than offset additional transportation costs.

Because of this ever-widening pattern of distribution, Federal order marketing areas have been expanded, and former separate orders have been merged. From 1966 to 1971, 28 order areas were consolidated into 18 new areas, and 26 order areas were expanded.

Number of Handlers

Handlers have expanded their operations to take advantage of improved transportation and refrigeration facilities which make large distribution areas feasible. Also, improvements in milk processing and packaging equipment make it possible for plants to handle greater volume. The number of handlers in Federal order markets has decreased as their size has increased. In December 1961, there were 2,314 handlers in Federal order markets, and producer deliveries totaled 4.2 billion pounds for the month. In December 1971, there were 1,538 handlers, and producer deliveries amounted to 5.5 billion pounds.

Number of Producers and Deliveries

The number of producers supplying Federal milk orders has decreased in recent years, but the amount of milk delivered per producer has increased (table 5). Producers averaged 1,316 pounds in 1971—a fourfold increase from the 326-pound daily average in 1950.

During 1971, 141,318 producers delivered 67.9 billion pounds of milk to Federal order handlers—more than 60 percent of all the milk sold to plants and dealers in the Nation (table 2). Information for individual markets is shown in tables 5 and 6. The farm value of the Federal order producer deliveries was \$4.2 billion. In 1950, in contrast, handlers regulated by Federal orders received 18.7 billion pounds of milk, 25 percent of all milk sold.

Table 5.—Changes in market characteristics, 16 markets with Federal order regulation from 1950 to 1970

Marketing area	Producers delivering milk			Daily deliveries per producer			Handlers at end of year			Population, 1970 census
	1950	1970	1970 as a per-cent of 1950	1950	1970	1970 as a per-cent of 1950	1950	1970	1970 as a per-cent of 1950	
	No.	No.	Pct.	Lb.	Lb.	Pct.	No.	No.	Pct.	Thous.
New England:										
Boston Regional	16,781	8,017	47.8	302	1,235	408.9	199	93	46.7	7,076
Middle Atlantic:										
New York-New Jersey	50,353	26,802	53.2	374	1,052	281.3	124	143	115.3	20,538
East North Central:										
Ohio Valley	14,296	8,241	57.6	262	945	360.7	130	78	60.0	7,294
Chicago Regional	25,110	16,888	67.3	427	1,234	289.0	160	150	93.8	11,362
Louisville-Lexington-Evansville	2,136	2,897	135.6	317	997	314.5	28	22	78.6	2,409
West North Central:										
Duluth-Superior	1,409	648	46.0	209	787	376.6	10	3	30.0	202
Minneapolis-St. Paul	5,788	4,599	79.5	322	1,169	363.0	35	29	82.9	2,250
Quad Cities-Dubuque	1,088	996	91.5	754	1,164	154.4	30	13	43.3	588
Nebraska-Western Iowa	2,682	1,756	65.5	186	1,325	712.4	19	29	152.6	1,848
St. Louis-Ozarks	4,299	3,336	77.6	306	1,195	390.5	43	22	51.2	2,693
Kansas City	3,135	2,186	69.7	296	1,325	447.6	30	28	93.3	2,198
Wichita	834	666	79.9	298	1,500	503.4	7	14	200.0	841
East South Central:										
Paducah	294	343	116.7	212	1,017	479.7	4	5	125.0	348
Nashville	915	1,085	118.6	371	1,234	332.6	10	15	150.0	1,323
Knoxville	602	484	80.4	380	1,146	301.6	14	8	57.1	679
West South Central:										
New Orleans	2,829	1,294	45.7	223	1,214	544.4	26	19	73.1	1,183

State Milk Control Programs

Objectives of State Milk Control

States initiated milk control programs at about the same time and under the same conditions as Federal control. Therefore, it is not surprising that the policy Congress established for Federal milk marketing orders is echoed in the objectives of State milk control acts.⁵

The objectives of milk control legislation are laid down in various ways in the individual State laws. A major objective in practically all States is

the assurance of an adequate supply of wholesome milk at fair and reasonable prices to farmers as well as consumers. Several specifically give serving the public interest as an objective. It is apparent that the laws in force have been based on the States' responsibility to provide for the public interest.

Stabilization or orderly marketing is an objective in about one-third of the laws, and regulation of trade practices is cited in nearly half. Benefit to farmers—through establishing fair prices and fostering intelligently directed production—is a third major aim of State control legislation. A fair and reasonable price to farmers is mentioned as an objective more

⁵Sec. 2, Declaration of Policy. Agricultural Marketing Agreement Act of 1937, as amended.

Table 6.—Market characteristics, 46 selected marketing areas brought under Federal order regulation from 1950 to 1970

Marketing area	1970			Popu- lation, 1970 census	Marketing area	1970			Popu- lation, 1970 census
	Pro- ducers deliv- ering milk	Daily deliv- eries per pro- ducer	Hand- lers at end of year			Pro- ducers deliv- ering milk	Daily deliv- eries per pro- ducer	Hand- lers at end of year	
	No.	Lb.	No.	Thous.		No.	Lb.	No.	Thous.
New England: Connecticut	1,847	1,760	40	3,032	East South Central—Con. Chattanooga	746	1,422	6	616
Middle Atlantic: Middle Atlantic	8,519	1,448	77	10,651	Mississippi	1,354	1,350	23	1,722
					Georgia	1,466	2,253	38	4,390
South Atlantic: Appalachian	874	1,265	8	536	West South Central: Central Arkansas	721	1,529	8	884
Tampa Bay	115	8,954	11	1,779	Fort Smith	151	1,529	2	71
Southeastern Florida	90	18,585	13	2,431	Oklahoma Metropolitan	1,902	1,226	12	1,267
Upper Florida	191	7,066	13	2,233	Red River Valley	541	1,536	7	569
					Texas Panhandle	262	1,705	4	328
East North Central: Upstate Michigan	23	1,139	5	196	Lubbock-Plainview	220	2,318	4	353
Southern Michigan	8,671	1,172	55	7,765	Northern Louisiana	272	2,196	9	583
Eastern Ohio-W. Pennsylvania	9,930	944	137	8,498	North Texas	1,901	1,714	20	3,232
Michigan Upper Peninsula	349	854	16	333	Central West Texas	253	1,875	6	460
Indiana	4,509	1,083	43	4,326	Austin-Waco	242	2,227	4	802
Southern Illinois	2,342	1,049	19	1,966	San Antonio	297	3,197	9	830
Central Illinois	672	1,052	14	924	Corpus Christi	241	2,625	9	699
					South Texas	1,841	1,616	25	2,943
West North Central: Eastern South Dakota	393	1,304	6	401	Mountain: Eastern Colorado	1,237	1,599	19	1,930
Black Hills	80	1,866	3	105	Great Basin	886	1,512	20	1,019
North Central Iowa	594	1,163	7	530	Western Colorado	56	1,694	5	103
Cedar Rapids-Iowa City	396	1,064	4	157	Central Arizona	176	8,930	11	1,532
Des Moines	1,265	1,109	15	683	Rio Grande Valley	362	4,324	22	1,386
Minnesota-North Dakota	1,684	1,066	15	637					
S.E. Minnesota-N. Iowa	978	1,311	14	690	Pacific: Puget Sound	1,776	2,128	21	2,177
Neosho Valley	262	1,271	7	532	Inland Empire	455	1,533	12	452
East South Central: Memphis	730	1,677	10	1,060	Oregon-Washington	1,290	2,255	59	2,487

frequently than a reasonable (or controlled) consumer price.

Major Characteristics of State vs. Federal Milk Control

Some major differences exist between Federal milk marketing orders and their State counterparts.

Scope of Control

Each State's authority for controlling price is State legislation; this authority applies only within the State. Federal orders can regulate milk prices in a market if the milk is moved in interstate commerce.

Levels of Price Control

As noted earlier, Federal orders establish only minimum class prices that dealers have to pay producers. Many States also concern themselves with resale prices (fig. 1 and tables 7 and 8). At the beginning of 1972, 18 States and Puerto Rico were establishing producer prices; 16 States were authorized to set wholesale prices; and 15 States were authorized to set retail prices. The widening of marketing areas and the price-cutting activities and nonprice competition associated with such extensions have led a number of other States to enact laws regulating trade practices and sales below cost for fluid milk sales (tables 7 and 9). In 1971, trade practice laws existed in 28 States and Puerto Rico; in addition, 10 States without authority to set prices had laws prohibiting sales of milk below cost. All States that set resale prices also prohibited sales below cost.

Many problems that State milk control agencies face in setting producer prices are similar to those of Federal milk marketing orders. In some cases, both attack problems in a similar fashion.

For example, both State and Federal orders use classified pricing plans. While Federal orders base Class I prices on the Minnesota-Wisconsin price, most State control agencies specify a Class I price in their orders (table 10). Only five States use an economic formula to determine Class I prices.

Many Federal and State milk orders (but not all) employ seasonal pricing plans to encourage more

even milk supplies throughout the year (tables 4 and 10). Both systems use the base-excess approach in some markets and the Louisville (take-out and payback) plan in others. One State varies prices seasonally to induce level production.

Class I base plans are in effect in two Federal markets—Georgia and Puget Sound—and nine States (table 10).

How these approaches to pricing work was explained under Federal Milk Marketing Orders.

Licensing, Registration, and Investigation

State milk control agencies have somewhat different authority than that authorized for Federal milk marketing orders. All State control agencies have authority to require licensing of distributors and to require licenses for specific marketing areas. In markets where there are joint Federal-State orders, such as in New York and New Jersey, the licensing power of the States strengthens enforcement. Three States—California, Hawaii, and Montana—require registration of producers.

Like Federal milk market administrators, State control agencies have the power to investigate, inspect, and audit, as well as require reports from handlers. In most States, control agencies do not verify producers' milkfat tests; however, they either require permits or licenses for milk testing or inspect or certify the testing equipment or both.

Milk Promotion

Only recently have Federal orders been authorized to permit producer deductions for promotion programs for milk (see p. 8). Many States have long recognized a public need for encouraging dairy sales.

Early State programs for promoting dairy product sales were generally limited to participation in the educational type of program carried out by the National Dairy Council. The increase in the kind of promotion and advertising sponsored by the American Dairy Association in the past decade, and increased attention to new product development during the past 2 to 3 years have shifted emphasis in State promotion programs. Declining milk sales also aroused the dairy industry to the need to maintain its market. Farmer organizations see a need for farmers to support dairy sales in their own

STATES REGULATING FLUID MILK PRICES

January 1, 1972

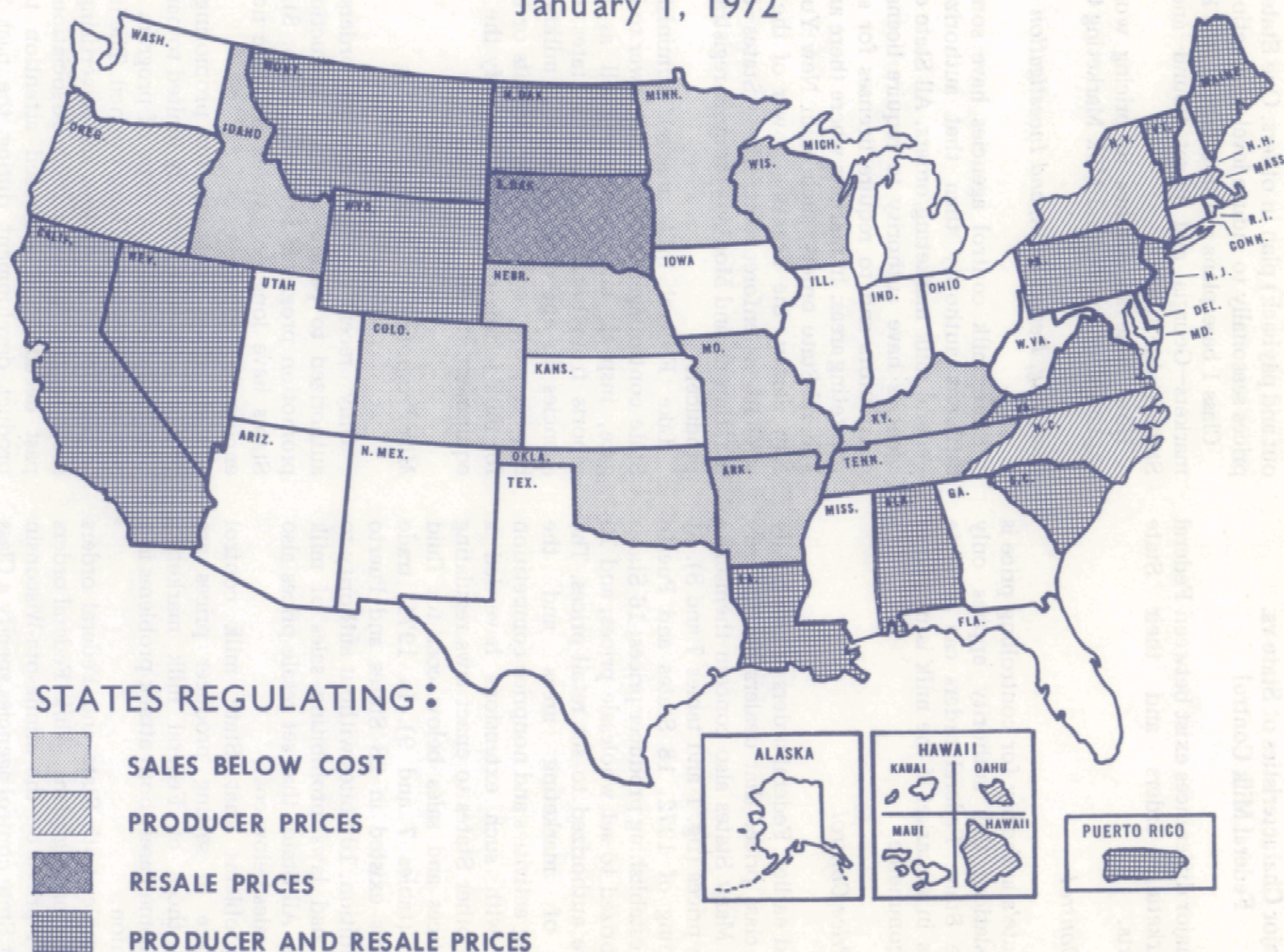


Figure 1

Table 7.—States regulating milk prices and trade practices and authorizing milk promotion,
January 1972

State	Minimum prices established at—			Trade practice regulations	Milk promotion
	Producer level	Whole- sale level	Retail level		
Alabama	X	X	¹ X	X	—
Arkansas	—	—	—	X	—
California	X	X	X	X	X
Colorado	—	—	—	X	X
Connecticut	—	—	—	X	X
Georgia	—	—	—	—	X
Hawaii	X	—	—	—	² X
Idaho	—	—	—	X	X
Iowa	—	—	—	X	—
Kentucky	—	—	—	X	—
Louisiana	X	X	X	X	X
Maine	X	X	X	X	X
Massachusetts	X	(³)	(³)	X	⁴ X
Minnesota	—	—	—	X	³ X
Missouri	—	—	—	X	—
Montana	X	X	X	X	—
Nebraska	—	—	—	X	—
Nevada	X	X	X	X	—
New Hampshire	—	—	—	—	X
New Jersey	X	X	X	X	X
New York	X	—	—	X	³ X
North Carolina	X	(³)	(³)	X	—
North Dakota	X	X	¹ X	X	X
Oklahoma	—	—	—	X	—
Ohio	—	—	—	—	³ X
Oregon	(⁵)	—	—	—	X
Pennsylvania	X	X	X	—	³ X
South Carolina	X	X	X	X	—
South Dakota	—	X	X	X	X
Tennessee	—	—	—	X	—
Utah	—	—	—	—	X
Vermont	X	X	X	X	X
Virginia	X	¹ X	¹ X	X	—
Washington	—	—	—	—	X
West Virginia	—	—	—	—	X
Wisconsin	—	—	—	X	X
Wyoming	X	X	—	X	—
Puerto Rico	X	¹ X	¹ X	X	X

X = yes; — = No.

¹ Also establishes maximum prices.

² Industrywide agreement on Oahu, coordinated by State.

³ Authorized but not used.

⁴ The Milk Control Law states "... to promote programs designed to increase the consumption of milk."

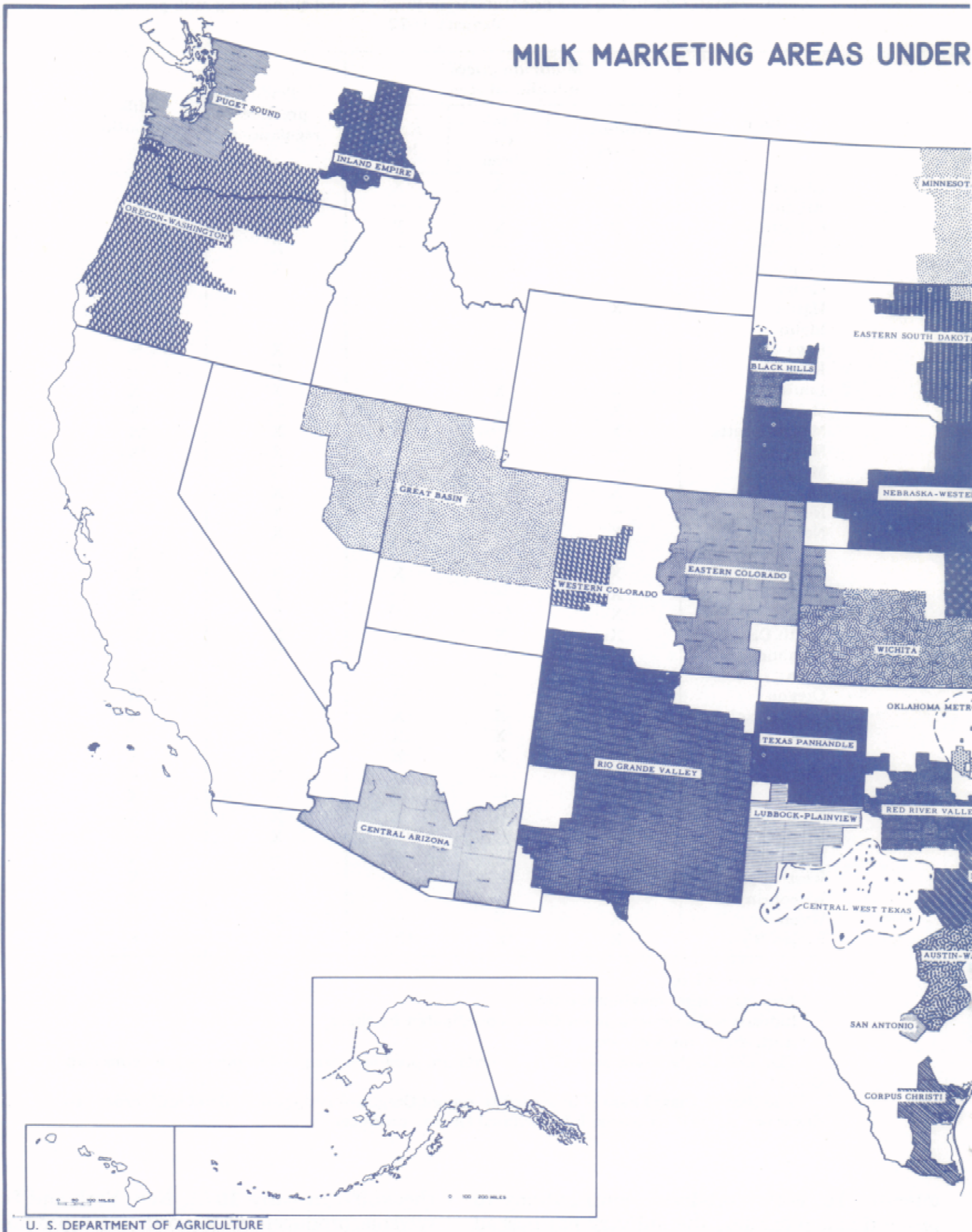
⁵ The State's Class I base plan is used to repool Oregon-Washington Federal milk order producer payments if requested by individual Oregon producers.

interest. To widen producer contributions to promotional programs, the industry has pushed for State legislation authorizing checkoffs from producer returns for milk. Several States, including Wisconsin, have turned down advertising

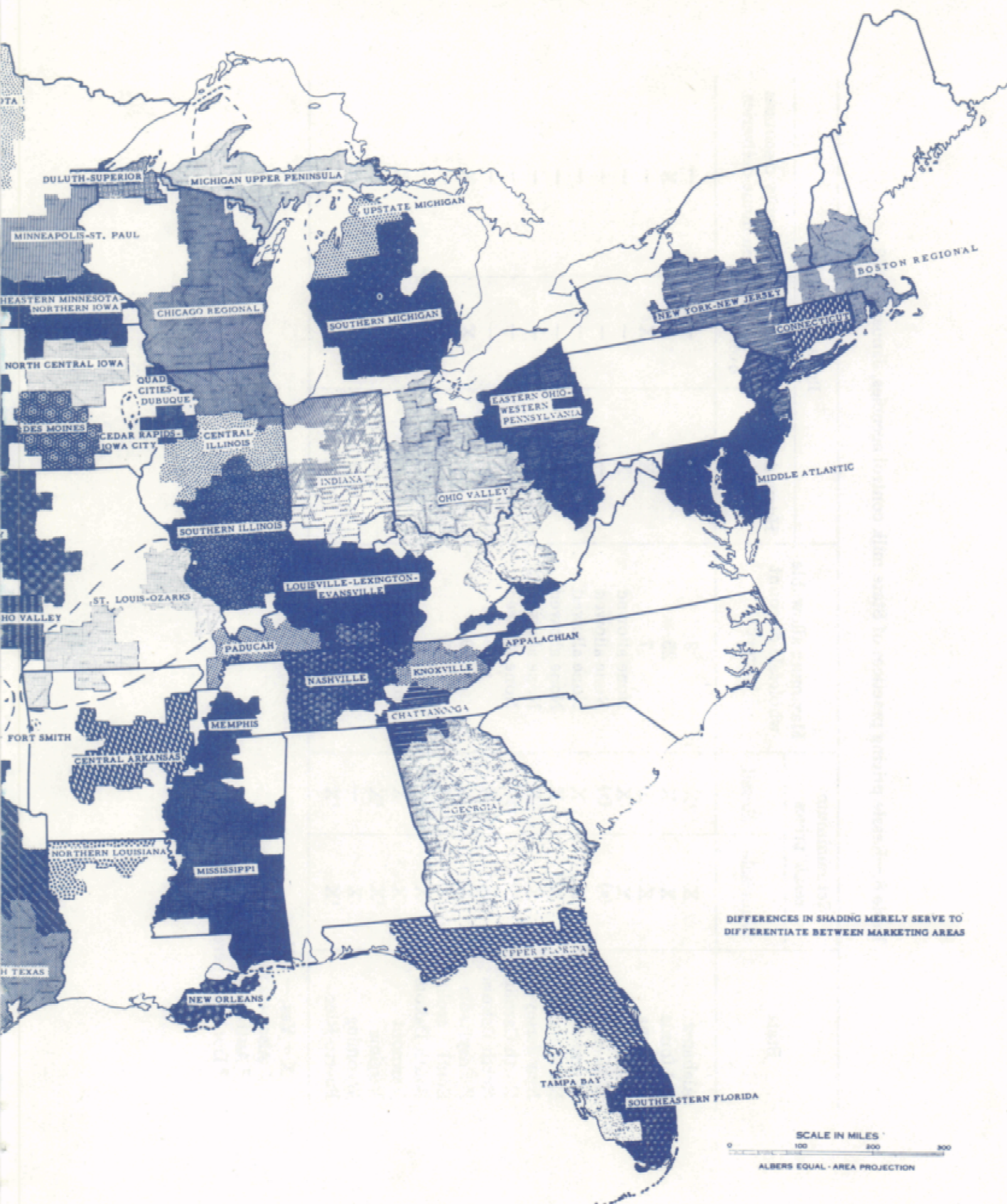
checkoffs. In early 1972, New York and Pennsylvania producers were voting on a promotion program.

In 1971, 23 States and Puerto Rico had authority to establish milk promotion plans—12

MILK MARKETING AREAS UNDER



GENERAL ORDERS AS OF JANUARY 1, 1972



Reg. CMS 311-72(1) (Rev)

CONSUMER AND MARKETING SERVICE

Table 8.—Resale pricing practices of State milk control agencies, January 1972

State	Set minimum resale prices		Maximum allowable wholesale discount (percent)	Price differentials		
	Wholesale	Retail		Home delivery over store	Paper and plastic over glass	Quantity discounts on home deliveries
Alabama	X	¹ X	8	X	—	—
California	X	X	25	X	—	X
Louisiana	X	X	7	X	X	—
Maine	X	X	None allowed	X	—	—
Massachusetts	(2)	(2)	None allowed	—	—	—
Montana	X	X	None allowed	—	—	—
Nevada	X	X	None allowed	X	—	—
New Jersey	X	X	None allowed	X	—	—
North Carolina	(2)	(2)	None allowed	—	—	—
North Dakota	X	¹ X	8	—	—	—
Pennsylvania	X	X	29	X	X	X
South Carolina	X	X	11	X	—	—
South Dakota	X	X	8	X	—	—
Vermont	X	X	None allowed	X	—	X
Virginia	¹ X	¹ X	³ 13	—	—	—
Wyoming	X	—	None allowed	—	—	—
Puerto Rico	¹ X	¹ X	None allowed	X	X	—

X = Yes; — = No.

¹ Also sets maximum prices.² Authorized but not used.³ Dock—21 percent.

Table 9.—Trade practice provisions of State agencies, January 1972

State	Sales below cost		Prohibits—				Rebates		Requires price filing		Sales below cost					
			Price discrimination		Discounts						Decided by a percentage markup		Allowed for— ¹			
	Whole-sale	Retail	Whole-sale	Retail	Whole-sale	Retail	Whole-sale	Retail	Whole-sale	Retail		A	B	C	D	E
Alabama	X	X	X	X	X	X	X	X	—	—	—	—	—	—	—	—
Arkansas	X	—	X	X	X	—	X	—	—	—	X	X	—	—	—	—
California	X	X	X	X	—	—	² X	² X	X	³ X	—	X	—	—	—	—
Colorado	X	X	X	X	—	—	—	—	X	³ X	—	X	X	—	—	—
Connecticut	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Idaho	X	X	X	X	X	X	X	X	—	—	X	—	—	—	—	—
Iowa	—	—	X	X	—	—	—	—	X	X	—	—	—	—	—	—
Kentucky	X	X	X	X	—	⁴ X	—	⁴ X	X	—	—	X	—	X	X	—
Louisiana	X	X	X	X	—	X	X	X	—	—	—	—	—	—	—	—
Maine	X	X	X	X	X	X	X	X	—	—	—	—	—	—	—	—
Massachusetts	X	X	X	X	—	—	—	—	—	—	X	X	—	—	—	X
Minnesota	X	X	X	X	—	X	—	X	X	—	X	X	—	—	—	—
Missouri	X	X	X	—	X	—	X	X	—	—	X	—	—	—	X	—
Montana	X	X	X	X	X	X	X	X	—	—	—	—	—	—	—	—
Nebraska	X	X	X	—	⁵ X	⁵ X	⁵ X	⁵ X	—	—	⁶ —	—	—	—	—	—
Nevada	X	X	X	X	X	X	X	X	X	X	X	X	—	—	—	—
New Jersey	X	X	—	—	—	—	—	—	—	—	—	—	—	—	—	—
New York	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	X
North Carolina	X	X	X	X	X	X	—	X	X	X	X	—	—	X	X	X
North Dakota	X	X	X	X	X	X	X	X	—	—	—	—	—	—	—	—
Oklahoma	X	—	X	—	—	—	—	—	X	—	—	X	—	—	—	—
South Carolina	X	X	—	—	—	—	X	X	—	—	—	—	—	—	—	—
South Dakota	X	X	X	X	—	X	X	X	X	X	X	—	—	—	—	X
Tennessee	X	X	X	X	⁷ X	—	⁷ X	—	X	X	⁸ X	X	X	X	X	X
Vermont	X	X	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Virginia	X	X	—	—	—	⁹ X	—	⁹ X	—	—	—	—	—	—	—	X
Wisconsin	X	X	X	—	—	—	—	—	—	—	X	X	X	X	X	X
Wyoming	X	—	X	—	X	—	X	—	—	—	—	—	—	—	—	—
Puerto Rico ¹⁰	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

X = Yes; — = No.

¹ Sales below cost are permitted (A) to meet competition, (B) for government contracts, (C) for liquidation, (D) for damaged goods, and (E) for other reasons.² If secret or unearned.³ Only home delivery.⁴ 3 percent allowed on drop delivery. More if justified at a hearing.⁵ If below minimum cost.⁶ Retail cost determined by markup from minimum base cost.⁷ Allowed if posted.⁸ In absence of lower retail costs.⁹ If below established minimum price.¹⁰ Puerto Rico enforces elimination of speculation, waste, and unfair and destructive practices.

Table 10.—Producer pricing provisions of State milk control agencies, January 1972

State	Percent of fluid grade marketings priced—		Number of classes	Class prices same in all markets	Basis for Class I pricing		Pooling arrangement		Seasonal production plan			Class I base plan		Producer approval necessary to	
	By State orders ¹	By Federal orders ²			Specified	Formula	Market-wide	Individual handler	Base-excess	Take-out pay-back	Variable Class I prices	Authority	Operating	Issue an order	Amend an order
Alabama	98	2	2	X	X	—	—	X	X	—	—	X	X	X	—
California	100	1	4	—	X	—	X	—	—	—	—	X	X	X	—
Hawaii	92	0	3	X	X	—	X	—	—	—	—	X	X	X	X
Louisiana	100	62	2	X	X	—	X	X	X	—	—	X	—	X	X
Maine	76	42	3	X	X	—	—	X	—	—	X	X	X	—	—
Massachusetts	100	92	2	—	³ X	—	—	X	—	X	—	X	X	—	—
Montana	80	1	3	—	—	X	—	X	—	—	—	X	⁴ —	—	⁵ X
Nevada	100	3	3	—	X	—	—	X	—	—	—	—	—	X	—
New Jersey	100	100	(⁶)	—	—	X	X	—	X	X	—	—	—	⁷ X	—
New York	82	87	2	⁸ X	—	X	X	—	—	X	—	—	—	X	X
North Carolina	100	5	2	X	X	—	—	X	⁹ X	—	—	X	X	—	—
North Dakota	100	53	2	¹⁰ X	—	X	—	X	—	—	—	—	—	—	—
Oregon	90	95	—	(¹¹)	—	—	—	—	—	—	—	X	¹¹ X	X	X
Pennsylvania	100	88	3	—	X	—	—	X	—	—	—	—	—	—	—
South Carolina	100	5	3	X	X	—	—	X	—	—	—	X	X	—	—
Vermont	100	92	—	X	(¹²)	—	X	—	—	X	—	—	—	—	—
Virginia	92	53	2	⁸ X	X	—	—	X	X	—	—	X	X	—	—
Wyoming	100	NA	3	X	—	X	—	X	X	—	—	—	—	X	X
Puerto Rico	98	0	2	X	X	—	X	—	X	—	—	—	—	—	—

X = Yes; — = No.

¹ Based on States' replies to questionnaires.² Reported in Federal Milk Order Market Statistics, Oct. 1971.³ 8.2 cents per hundredweight above Massachusetts-Rhode Island-New Hampshire Federal milk order price.⁴ Plans established by voluntary agreement, not under authority of 1970 State law.⁵ Only on pooling plans.⁶ Two classes in portion covered by the Middle Atlantic Federal order and three classes in portion covered by the New York-New Jersey Federal order.⁷ Authority not used.⁸ Only surplus classes.⁹ Plans are based on handler's demand patterns.¹⁰ Only Class I.¹¹ Oregon does not price producer milk. Its Class I base plan is used to repool Oregon-Washington Federal milk order producer payments if requested by individual Oregon producers.¹² Price established on basis of Massachusetts-Rhode Island-New Hampshire Federal milk order blend price.

Table 11.—State milk promotion authority and provisions, January 1972

States with legislative authority	Currently using authority	Amount of marketed milk assessed	Requires producer approval	Activities			Funding			
				Advertising	Education	Research	Assessment			Appropriated
							Producer	Handler	Mandatory	
		Pct.					Pct. of blend	Cents/cwt.	Cents/cwt.	
California	X	100	X	X	X	X	¹ 1.0	—	(1)	X —
Colorado	X	100	—	X	—	—	—	—	(2)	X —
Connecticut	X	95	X	X	—	—	—	5	—	—
Georgia	X	100	X	X	X	X	—	5	—	X —
Hawaii	³	85	X	X	X	X	—	(3)	—	—
Idaho	X	100	—	X	X	X	.5	—	—	X —
Louisiana	X	100	X	X	X	X	—	—	6	X —
Maine	X	100	—	X	X	X	—	⁴ 5	(4)	X —
Massachusetts	(5)	*	—	*	*	*	—	—	—	—
Minnesota	—	0	X	*	*	*	.5	—	—	—
New Hampshire	X	*	—	X	—	—	—	—	—	X
New Jersey	—	0	X	*	*	*	—	—	—	—
New York	(6)	0	X	*	*	*	—	—	—	—
North Dakota	X	83	—	X	X	X	—	(7)	—	⁸ X —
Ohio	—	0	X	*	*	*	—	—	—	—
Oregon	X	100	X	X	X	X	1.0	—	—	X —
Pennsylvania	—	0	X	*	*	*	—	—	—	—
South Dakota	X	90	—	X	X	X	—	2	—	⁸ X —
Utah	X	100	—	X	—	X	.5	—	—	X —
Vermont	X	100	—	X	X	X	—	1.5	1.5	—
Washington	X	100	X	X	X	X	—	4	—	X —
West Virginia	X	*	—	X	X	—	—	—	—	X
Wisconsin ⁹	X	*	—	X	X	X	—	—	—	X
Puerto Rico	X	85	X	X	X	—	—	¹⁰ 11.6	¹⁰ 11.6	X —

X = Yes; — = No; * = Not applicable.

¹ Producers and handlers pay 0.3 cent per pound of milkfat in Class I products, except in May and October when the assessment is 0.5 cent per pound of all milkfat.

² Assessments collected under the marketing order may be used to finance promotion projects.

³ Voluntary, coordinated by State, effective only on Oahu.

⁴ Producers and handlers also pay 1.5 cents per hundredweight mandatory contributions to State Dairy Council on all milk marketed within Maine.

⁵ Milk Control Law states, "... to promote programs designed to increase the consumption of milk."

⁶ In February 1972, producers approved a promotion order authorizing assessments up to 5 cents per hundredweight.

⁷ One-half cent per pound of butterfat.

⁸ Provides for refunds.

⁹ Also has authority to establish a producer-financed program with producer approval.

¹⁰ One-fourth cent per quart of nonsurplus milk.

States (and Puerto Rico) with milk control laws and 11 States without them (table 11). In all but three of these States, promotion was financed by producer or handler assessment or both. New Hampshire, West Virginia, and Wisconsin support promotion programs with appropriated funds.

State Regulation

In the following section, milk price control, trade regulation, and promotion activities of each State and Puerto Rico are outlined, together with summaries of legislation and litigation that have taken place since 1968. With tables 7 through 11, these outlines furnish a

general statement of individual State activities, based on replies to a letter and questionnaire by each State control agency. More complete information and details of administration can be obtained by studying State laws authorizing controls and by contacting State milk control agencies. A list of agencies and their addresses is at the end of the report.

ALABAMA

Milk Price Control

The Alabama Dairy Commission regulates the entire fluid milk industry in the State. It sets

producer prices for milk sold for bottling, regardless of actual use. This amounts to about 98 percent of the fluid grade milk producers sell to plants and dealers. In addition, the commission sets forth rules regulating a producer quota program and establishes minimum wholesale and retail prices of fluid products and maximum retail prices for half-gallons of whole milk.

In establishing producer and resale prices, the dairy commission considers the balance between production and consumption of milk, the cost of production and distribution (both retail and wholesale), and the purchasing power of consumers in the localities and markets of the State. Before fixing prices based on handling, processing or transportation costs, the commission holds public hearings and hears relevant evidence.

Regulation of Trade Practices

The dairy commission also administers trade practice provisions which: Prohibit false and misleading advertising or the misrepresentation of dairy products; forbid giving anything of monetary value, either directly or indirectly, with the purchase or sale of milk products; regulate the donation of free samples; and protect the quality of dairy products during transactions between producers, producer-distributors, and distributors.

Legislation and Litigation Since 1968

The Circuit Court of Montgomery ruled that the Alabama State milk control agency cannot license out-of-State producers nor establish a price for milk sold by out-of-State producers to processors in the State. This decision prevents the Alabama Dairy Commission from providing a common product cost to Alabama processors.

A 1971 milk control act changed the name of the milk control agency to the Alabama Dairy Commission. Also, in February 1972, the composition of the commission was changed to four consumer members and the Commissioner of Agriculture. The commission has authority to consult with agricultural economists and industry members for help in making decisions.

ARKANSAS

Regulation of Trade Practices

Objectives of State regulation are to control

both the retailing and wholesaling of milk when offers, sales, or advertisements for sale of fresh milk and milk products are at less than cost; to control rebates, refunds, and discounts; and to restrict sales of equipment by processors and distributors.

Arkansas depends on regulation of sales below cost at the wholesale level to attain the objectives of its law. Wholesale prices may not be less than cost plus a 4-percent markup, unless specifically excluded from regulation. Sales of fresh milk and milk products to Federal institutions, State tax-supported charitable or penal institutions, and church-supported institutions are excluded from regulation.

CALIFORNIA

Milk Price Control

The California Bureau of Milk Stabilization establishes minimum prices paid producers for market milk. It also sets minimum wholesale and retail prices for fluid whole milk and lowfat milk. All fluid grade milk that producers sell to plants and dealers is priced under State regulation.

Minimum prices to producers must be in a reasonable and sound economic relationship with the price of manufacturing milk and must take into account the additional cost of producing and marketing fluid milk and the current and prospective supply of and demand for fluid milk. The director of the California Department of Agriculture must find that such prices will insure consumers an adequate and continuous supply of wholesome milk at fair and reasonable prices.

In determining minimum wholesale and retail prices for fluid milk and cream, the following factors are considered: The quantity distributed; the effect of the price level on consumption; the purchasing power of consumers; the cost to distributors and retail stores; the cost of handling; a reasonable return on capital investment; and the amount of available capacity for processing and distributing milk and cream.

All stabilization and marketing plans for fluid milk prescribe minimum prices to be paid by distributors for milk and cream products or milkfat or fluid skim milk components of such products. California, the first State to prescribe component pricing of fluid milk and cream, establishes prices for milkfat, nonfat solids, and the fluid part of milk.

Regulation of Trade Practices

The Bureau of Milk Market Enforcement of the California Department of Agriculture administers the provisions of the California Agricultural Code which prohibit: Selling below cost; giving free gifts to obtain the dairy products business of a customer or consumer; supplying refrigeration facilities, advertising allowances, or materials to wholesale customers; practicing price discrimination; granting secret rebates or unearned discounts; and establishing contract requirements between producers and distributors of fluid milk.

Milk Promotion

California has two promotional organizations. The California Milk Producers Advisory Board administers (subject to review by the California Department of Agriculture) promotional, research, and educational programs for milk. The board is composed of 24 producers appointed by the Director, State Department of Agriculture. The programs are financed by assessments on producers of 1 percent of their gross income.

The Dairy Council of California administers (subject to review by the California Department of Agriculture) promotional, research, and educational programs for milk. The council consists of both producer and distributor representatives. The programs are financed by assessing producers and distributors 5 mills per pound of all milkfat in May and October and 3 mills per pound of milkfat in Class I products during the other 10 months of the year.

COLORADO

Regulation of Trade Practices

The Colorado Milk Marketing Order requires the filing of schedules of wholesale and home delivery prices, discounts, and rebates with the Commissioner of Agriculture. The commissioner may suspend the use of a schedule and hold a hearing to gather evidence as to whether such prices, rebates, and discounts are fair. Sales to schools and government agencies are exempt from the filing requirement. To eliminate unfair competition, several practices are prohibited, including gifts, loans, unposted discounts and rebates, and sales below cost.

Milk Promotion

The Milk Marketing Board is authorized to conduct advertising and sales promotion programs financed by handler assessments under the marketing order, which are collected primarily for regulatory purposes.

Legislation and Litigation Since 1968

The Colorado Agricultural Marketing Act of 1939, as amended, was further amended to authorize the regulation at the handler level of milk produced outside the State and sold in the State on the same basis as State-produced milk.

The Colorado Supreme Court confirmed the validity of the Colorado Agricultural Marketing Act of 1939, as amended, and marketing orders issued under its authority.

CONNECTICUT

Regulation of Trade Practices

After notice and hearing, the Commissioner of Agriculture may prohibit unfair trade practices. An unfair trade practice is defined as the selling of milk at prices which disrupt the market or tend to lessen competition. No action has ever been taken under this authority.

Milk Promotion

Connecticut Milk for Health, Inc., finances research and product development programs for milk. Its funds are obtained by assessing participating producers 5 cents per hundredweight of marketed milk. While producers may elect not to participate, producers of about 95 percent of the milk marketed in the State do so.

GEORGIA

Milk Promotion

The Georgia Agricultural Commodity Commission promotes dairy products through sales promotion and educational and research programs. The commission is supported, controlled, and financed by Georgia dairy farmers. All dairymen in Georgia are assessed 5 cents per hundredweight on all milk produced in the State.

HAWAII

Milk Price Control

Under the provisions of the Hawaiian Milk Control Act, State milk control can be activated only in counties which petition the State Board of Agriculture for the establishment of a milkshed. In October 1971, State milk control was in effect on the islands of Oahu and Hawaii. The island of Kauai has a petition pending. Under the act, minimum prices producers receive are set by the Hawaiian Milk Commission. About 92 percent of the State's milk is produced for and marketed on Oahu and Hawaii. Regulation of trade practices is not a part of Hawaii's law.

Standards by which minimum producer prices are determined by the Hawaiian Milk Commission are the cost of production, reasonable returns to producers, and the effect of such prices on the consumer. Resale prices are not established.

Milk Promotion

On January 1, 1971, Oahu producers and distributors, by industrywide agreement, formed an organization called the Fresh Milk Industry of Hawaii. Its purpose is to promote nonbrand, fresh milk advertising and it is financed by an assessment of 4 cents per hundredweight on milk produced and processed. This assessment is voluntary (not by law) although the program is coordinated by the State Department of Agriculture.

Legislation and Litigation Since 1968

In 1971, the legislature amended the Milk Control Act to include any county desiring to petition the State Board of Agriculture for the establishment of a milkshed. Previously, milk control was restricted to the city and county of Honolulu (that is, the island of Oahu).

IDAHO

Regulation of Trade Practices

The Bureau of Dairying of the Idaho Department of Agriculture administers legislation relating to trade practices. Price discrimination at the producer level is prohibited. The law prohibits wholesalers from making false statements about

rival suppliers. Secret rebates or refunds, unearned discounts, gifts or sales below invoice or replacement costs to get or keep business, price or service discrimination, false advertising, are unlawful at wholesale and retail levels.

Milk Promotion

The Idaho Dairy Products Commission oversees milk promotion programs. The commission is composed of nine milk producers who are elected by fellow producers. It is authorized to conduct a campaign of research, education, and publicity; to find new markets; to inform the public about the value of milk, cream, and dairy products; to encourage the national and international use of Idaho dairy products; and to study problems of Idaho dairy producers. To finance the commission, producers are assessed 0.5 percent of the gross value of their marketed milk. The commission may also accept grants, donations, and gifts.

IOWA

Regulation of Trade Practices

The objective of the Iowa Unfair Dairy Trade Practices Act is to promote a fair competitive environment for processors and distributors by eliminating such trade practices as giving free goods or loans to retailers and leasing and repairing equipment and by limiting promotional activities.

The law compels processors and distributors to file all their prices for the purpose of determining possible discrimination. The law also prohibits price discrimination in a section patterned after the Federal Robinson-Patman Act. The Iowa statute does not prohibit sales below cost at either wholesale or retail levels unless there is discrimination in relation to the seller's other customers. "Below cost" sales are permitted to meet an equally low price of a competitor or when sales are made to schools, Government, and charitable institutions not operated for profit.

KENTUCKY

Regulation of Trade Practices

Kentucky prohibits sales below cost at both wholesale and retail levels. However, the law's

provisions do not apply to advertisements, offers to sell, or sales made when an owner's stock is sold for the purpose of discontinuing his trade or business; when a dairy product is damaged; when acting under an order of a court; and when made in good faith to meet legal prices of a competitor.

The Kentucky Milk Marketing and Antimonopoly Commission allows a 3-percent discount when delivery is the only wholesale service supplied. Discounts and rebates exceeding the 3-percent allowable rate for drop delivery may be given if they can be justified at a hearing before the commission.

Legislation and Litigation Since 1968

The Kentucky Court of Appeals declared that the Kentucky Milk Marketing and Antimonopoly Commission was constitutional on October 24, 1969. This decision reversed a previous decision of the Franklin Circuit Court.

The commission has held public hearings in various sections of the State on establishing new regulations. The new regulations have not been established.

LOUISIANA

Milk Price Control

Two Louisiana agencies participate in the milk regulatory program: The Milk Testing Division of the Louisiana Department of Agriculture and the Louisiana Milk Commission. The Louisiana Milk Testing Division establishes minimum prices producers receive for milk sold for fluid use. Practically all Louisiana milk sold to plants and dealers is subject to State price regulation, including that marketed in the two Federal order areas in the State.

The Louisiana Milk Commission sets minimum wholesale and retail prices for fluid milk items.

Regulation of Trade Practices

The Louisiana Milk Commission also administers the provisions of the Orderly Milk Marketing Law which prohibits certain "disruptive sales practices"—such as granting rebates, making gifts or loans, granting unearned discounts, and selling fixtures for less than cost.

Milk Promotion

Louisiana handlers must pay 6 cents per hundredweight on their producer receipts. Collected funds are turned over to the American Dairy Association of Louisiana, which, with the National Dairy Council, uses the funds for promotional, educational, and research programs.

MAINE

Milk Price Control

The Maine Milk Commission regulates minimum prices at all levels of marketing. Approximately 76 percent of the milk marketed in Maine is regulated by the commission; the other 24 percent enters various out-of-State markets. About 42 percent of the milk is priced under Federal milk orders.

The law provides for just and reasonable prices, with consideration given to public health and welfare and the assurance of an adequate supply of pure and wholesome milk produced under varying conditions in various marketing areas. The milk commission also considers seasonal production and other factors affecting costs of production, transportation, and marketing, including a reasonable return to the producer and dealer.

Regulation of Trade Practices

The Maine Milk Commission's regulatory program includes trade practice regulation governing the purchase, distribution, and sale of milk. The regulation prohibits use of any method or device that makes it possible for milk to be bought and sold at less than the scheduled minimum prices, whether by rebate, discount, gratuity, advertising allowance, free service, combination price for milk with other commodities, or any other consideration.

Milk Promotion

Maine has two promotional organizations: The Maine Milk Tax Committee and the Maine Dairy Council. Both organizations were created through legislative authority. The Maine Milk Tax Committee conducts advertising programs financed by producer assessment on all deliveries

of 5 cents per hundredweight. The Maine Dairy Council programs are financed by assessing producers and handlers 1.5 cents per hundredweight on all milk distributed within Maine.

Legislation and Litigation Since 1968

Several decisions of the Superior Court upheld the provisions of the Maine Milk Commission Law.

MASSACHUSETTS

Milk Price Control

The Massachusetts Milk Control Commission establishes producer prices for all milk sold in Massachusetts. However, most of the milk producers sell to plants and dealers is also priced under Federal order regulation—Berkshire and Nantucket Counties are the only counties in Massachusetts not included in the marketing area of the Boston Regional Federal milk order. The commission is not currently exercising its authority to establish wholesale or retail prices.

Regulation of Trade Practices

The Massachusetts Milk Control Commission administers legislation relating to trade practices. Massachusetts law prohibits sales below cost and the use of any method or device to achieve them, whether by discount, rebate, free service, or advertising allowance.

MINNESOTA

Regulation of Trade Practices

The objective of the Minnesota Dairy Industry Unfair Trade Practices Act is to protect the health and welfare of the public, and to preserve orderly marketing of dairy products by eliminating certain trade practices which destroy, lessen, or restrain competition.

Sales below cost are forbidden at both the wholesale and retail level. Exemptions from the law apply when: (1) discontinuing business; (2) selling perishable or damaged goods; (3) acting under court order; or (4) meeting lawful competition.

A wholesaler is required to sell at the manufacturer's price plus 2 percent or plus the wholesaler's cost of doing business, whichever is

greater. A retailer is required to have at least an 8-percent markup over the wholesale invoice price. If his markup is 8 to 15 percent, the State Department of Agriculture must determine if he is selling above or below cost. If a retailer has marked his price up 15 percent, the State no longer has jurisdiction, regardless of whether competition has been injured.

MISSOURI

Regulation of Trade Practices

Missouri prohibits sales below cost at both the wholesale and retail levels. Provisions regarding advertisements, offers to sell, or sales do not apply to sales under the following conditions: (1) isolated transactions, not in the usual course of business; (2) sales of damaged merchandise; (3) sales upon final liquidation of any business; (4) sales for charitable purposes; (5) sales by an officer acting under court direction; and (6) sales to meet competition.

MONTANA

Milk Price Control

The Montana Milk Control Board establishes minimum prices producers receive for milk sold to plants and dealers for bottling—about 80 percent of all milk sold to plants and dealers. The control board also sets wholesale and retail prices for fluid items.

Pricing formulas are authorized to determine the level of Class I producer and resale milk prices. The formulas may include such factors as the balance between production and consumption; the costs of production, processing, distribution, and retailing by reasonably efficient producers and processors in the market area; and prices in neighboring areas and States.

Regulation of Trade Practices

Regulating trade practices is part of the Montana Milk Control Board's program. Business practices which are prohibited include: Selling below cost; accepting allowances, secret rebates, refunds, and unearned discounts; giving milk, dairy products, services, or articles of any kind, except to bona fide charities; and extending special prices or services that are not available to all customers who purchase milk in

the same quantities under the same terms and conditions.

Legislation and Litigation Since 1968

In 1971, the Montana Milk Control Law was amended, deleting the requirements for a minimum of five marketing areas and the authority for local advisory boards. Authority was added for (1) establishing pricing formulas; (2) establishing Class I base plans; (3) market-wide pooling; (4) licensing jobbers and milk importers and assessing civil penalties by the Milk Control Board; and (5) setting a time limit on credit to retailers and prohibiting financing of producers or retailers by distributors.

NEBRASKA

Regulation of Trade Practices

Nebraska prohibits the sale of any dairy product for less than the minimum basic cost established by the Nebraska Dairy Products Advisory Board. The board, composed of two handlers, two retailers, two producers, and one consumer, sets minimum basic costs for three types of delivery: Full service, limited service, and at the processor's dock. Separate cost determinations may be made for each marketing area within the State.

Cost to the distributor is the minimum basic cost. Since retailers' costs of business are less when they receive full service, the minimum basic cost for the retailer is 10 percent above the distributor's minimum basic cost when given full service by the distributor; 13 percent with limited service; and 15 percent with pickup at the processor's dock. Trade practices that reduce prices below the minimum basic cost, exclusive contracts, and price discrimination are prohibited. However, a different set of prices, but not below minimum basic costs, may be used for sales to nonprofit, charitable, educational, and religious organizations; licensed hospitals; and government agencies.

The Division of Dairy Trade Practices, Nebraska Department of Agriculture, administers the legislation.

Legislation and Litigation Since 1968

Price regulation authority was granted and the trade practice regulations were amended in 1969

to accord with the price regulation authority.

In February 1971, the Nebraska Dairy Products Advisory Board was enjoined from regulating resale milk prices. This injunction also affected some provisions of the amended trade practice regulations. The Nebraska Industry Trade Practices Act was then amended in 1971 to exclude milk price regulation.

NEVADA

Milk Price Control

The Nevada Dairy Commission sets prices producers receive for practically all milk sold to plants and dealers. It also establishes wholesale and retail prices for fluid products sold in Nevada and regulates trade practices in fluid product distribution.

The commission has the authority to regulate prices at all levels. In determining prices, the commission considers various factors, including costs of production and distribution, a reasonable return on investment, and supply and demand conditions in the marketing area.

Regulation of Trade Practices

The Nevada Dairy Commission administers the statutes which specifically call for the elimination of unfair and restrictive trade practices, such as extension of special prices or services; secret rebates; unearned discounts; sales below cost; gifts of products, articles, and services to secure business; and extension of credit beyond regulatory limits.

NEW HAMPSHIRE

Milk Promotion

Although lacking specific legislation, New Hampshire budgets funds for milk promotion. The funds are used to help finance such activities as displays, organizational gatherings, the dairy princess program, education, and store promotions.

NEW JERSEY

Milk Price Control

Prices New Jersey producers receive for milk are regulated under the New York-New Jersey

joint Federal-State order. Practically all of the milk producers sell to plants and dealers is regulated. The New Jersey Division of Dairy Industry also regulates the wholesale and retail prices of fluid items.

Minimum resale prices are based on the Class I prices of the joint Federal-State order to which are added fixed margins developed from an extensive analysis of the cost of procuring, processing, and distributing milk in New Jersey.

Regulation of Trade Practices

Trade regulation is an important part of the division's program. Regulations prohibit: Trading in milk products purchased at prices below those established by the Division of Dairy Industry; acquiring the business of another dealer, processor, producer-dealer, or subdealer; selling milk to government agencies; extending credit between firms; lending or receiving items of value in the sale or solicitation for sale of milk and milk products; and changing the source of supply.

Milk Promotion

New Jersey received legislative authority for statewide milk promotion programs in September 1971 but by the end of 1971 had not taken any action under this law.

Legislation and Litigation Since 1968

Following extensive hearings in late 1968 and early 1969, the Division of Dairy Industry entered an order providing for minimum retail prices. This order was appealed to the New Jersey Supreme Court and was remanded to the division for further hearings and findings of fact. The hearings were completed in April 1971 but final determination is pending. As a result of the appeal and stay of portions of Order 69-1, minimum wholesale and retail prices have remained unchanged since 1964.

Authority for New Jersey to adopt milk promotion programs was signed into law in September 1971.

NEW YORK

Milk Price Control

New York sets producer prices for the 72 percent of the milk priced under the

New York-New Jersey joint Federal-State order and the 10 percent regulated under the Niagara Frontier and Rochester State orders. Most of the other 18 percent is marketed in New England and priced under Federal orders. Before fixing minimum producer prices, the Commissioner of the Department of Agriculture and Markets determines reasonable costs and charges for producing, hauling, and processing milk (plus any other services performed), and also determines prices for milk in the market or markets affected by such costs that would be most in the public interest. He also considers the balance between production and distribution, including compliance with all sanitary regulations; the cost of feed used in production; the supply of milk; and the purchasing power and welfare of the public.

Regulation of Trade Practices

The New York Milk Control Law prohibits buying or selling milk at less than the applicable producer price through discounts, rebates, free services, advertising, allowances, combined prices, or any other methods or devices. The law gives the commissioner the right to issue cease-and-desist orders (subject to review) if he believes an agreement between a producer's bargaining association and dealers has unduly increased the price of milk. The law authorizes price fixing only at the producer level. Sales below cost are prohibited unless indicated in advertising and at point-of-sale.

Milk Promotion

In February 1972, producers approved a statewide promotion order for advertising, education, and research programs administered by an advisory board of 10 dairy farmers. The order authorizes mandatory assessments up to 5 cents per hundredweight on all producer marketings, but allows credits or adjustments for voluntary or mandatory payments made under Federal or other State milk promotion programs. The rate of assessment will be based on the recommendation of the advisory board and the approval of the commissioner.

Legislation and Litigation Since 1968

Enacted legislation includes more comprehensive bonding requirements for milk dealers,

provides for prompt payment by milk dealers, and prohibits sales below cost unless they are shown in advertising and at point-of-sale.

Legislation authorizing State milk promotion orders became effective in 1969 and was modified in 1971 to require approval of an order by 51 percent of all producers eligible to vote instead of the former two-thirds of those voting.

A decision of the New York State Court of Appeals upheld the authority of the Commissioner of the Department of Agriculture and Markets to refuse or revoke the license of a milk dealer for selling milk outside the area covered by his license. The U.S. Supreme Court refused to review the decision.

NORTH CAROLINA

Milk Price Control

The North Carolina Milk Commission regulates prices of all Grade A milk sold by state producers and has authority to establish retail and wholesale prices after holding a public hearing and finding as a fact that it is in the public interest to do so.

In determining the reasonableness of prices to be paid or charged in any market, the commission is guided by the cost of production and distribution (including the cost of compliance with all sanitary regulations in force in the market); necessary operating, processing, storage, and delivery charges; the prices of other foods and commodities; and the welfare of the general public.

Regulation of Trade Practices

The North Carolina Milk Commission requires distributors to file schedules of retail and wholesale prices and to give the commission notice of price changes. Trade practice regulations permit the payment of volume rebates to qualified wholesale customers at rates and under conditions prescribed by commission regulations.

Trade practice regulations prohibit such practices as: Furnishing free refrigeration service and equipment, granting exceptional credit, giving free products, making or guaranteeing loans to customers or prospective customers, and granting unauthorized rebates or discounts. Sales below cost and loss leader sales are prohibited.

Audits and investigations are conducted to determine compliance with all aspects of trade practice regulations.

Legislation and Litigation Since 1968

In September 1969, the Superior Court ruled that when State distributors are in competition with out-of-State distributors, differences between North Carolina and out-of-State Class I prices and butterfat differentials must be considered in pricing Class I milk.

Effective October 5, 1971, a new Milk Commission Law changed the membership of the commission to a producer, a distributor, and five public members. The new law also prohibits loss leader sales and authorizes the commission to establish retail and wholesale prices where it is in the public interest.

NORTH DAKOTA

Milk Price Control

The North Dakota Milk Stabilization Board regulates all Grade A milk producers sell to plants and dealers. The board also regulates wholesale and retail prices of all fluid items.

The board sets minimum and maximum prices at levels intended to keep efficient processors, distributors, and retailers in business so as to ensure consumers an adequate and continuous supply of milk products at fair and reasonable prices. Pricing is designed to foster and encourage orderly and efficient marketing of milk products.

Regulation of Trade Practices

The board administers trade practice legislation. Prohibited practices include: Sales below cost; secret rebates or unearned discounts; gifts of dairy products, except to bona fide charities, to secure business; and price discrimination.

Milk Promotion

North Dakota conducts promotional and educational programs financed by mandatory deductions from producers, but producers may ask for an annual refund during January. Some funds are donated to the American Dairy Association.

Legislation and Litigation Since 1968

Although a new Milk Stabilization Law was enacted, the regulatory program of the North Dakota Milk Stabilization Board was not significantly altered.

OKLAHOMA

Regulation of Trade Practices

Objectives of trade practice regulation are to prevent processors, wholesalers, and distributors from selling below cost and subsidizing retail dealers through granting secret discounts, making gifts, and furnishing equipment. The law holds that such practices adversely affect the economy of Oklahoma and are contrary to the public welfare and public policy.

Oklahoma prohibits sales below cost at the wholesale level, with two exceptions: (1) sales made in good faith to meet existing competition; and (2) sales to any Federal agency or department. The law does not prohibit retailers from selling below cost; as a result, milk wars still occur in Oklahoma.

OREGON

Milk Price Control

Effective January 1, 1970, statutory provisions of the Oregon Milk Control Law became inoperative with the establishment of the Oregon-Washington Federal milk order. Producer pricing, milk classification, and auditing are administered under the Federal order, while the State administers a Class I base plan, oversees payments to producers, and regulates producer-handlers.

Milk Promotion

The Oregon Dairy Products Commission taxes producers 0.8 percent of their receipts to finance promotional and educational programs. The tax is levied on all marketed milk. The programs are carried out with the assistance of the Oregon Dairy Council and the State American Dairy Association.

Legislation and Litigation Since 1968

In *Tillamook County Creamery v. State of Oregon*, an Oregon State court ruled that in

Oregon there was a preemption in the area of milk regulation by a Federal milk order. Generally, courts have held that where there is a preemption by the Federal Government, State laws must not conflict with Federal regulations.

PENNSYLVANIA

Milk Price Control

The Pennsylvania Milk Marketing Board establishes producer and resale prices for the entire State. Some counties in Pennsylvania are also included in Federal milk order marketing areas. The board bases minimum producer prices on all conditions affecting the milk industry in each marketing area as presented in testimony at hearings. Factors considered include cost of production, reasonable returns to producers, current and prospective milk supply, demand for milk, and—under certain conditions—available supplies and prices of milk in States adjacent to Pennsylvania.

Resale prices are fixed after testimony is received at public hearings. Consideration is given to the cost of buying fluid milk; the costs of receiving, processing, packaging, and distributing; and a reasonable return to dealers.

Legislation and Litigation Since 1968

The name of the Pennsylvania law authorizing milk pricing was changed from the Milk Act to the Milk Marketing Law, and the name of the administrative agency was changed from the Pennsylvania Milk Control Commission to the Pennsylvania Milk Marketing Board. Also, the size of the bond required of handlers to insure payments to dairy farmers was increased.

The 1971 Marketing and Promotion Act revises the authority for producer-financed promotion programs. The current authority permits bloc-voting by cooperatives. Promotion programs would become operational if approved by a majority of producers.

A public hearing was held in October 1971 to consider a milk promotion program authorized by the new law.

Several court decisions, including one by the Pennsylvania Supreme Court, upheld the constitutionality of the Milk Marketing Law.

SOUTH CAROLINA

Milk Price Control

All Grade A milk that producers sell to plants and dealers is regulated by the State, and all fluid products sold in the State are priced under State resale regulations.

The South Carolina Dairy Commission establishes minimum prices based on such production costs as fixed costs, operating costs, and an amount necessary to yield a reasonable rate of return on the average cost of investment.

Regulation of Trade Practices

Trade practices prohibited by statute include: Secret rebates; discriminatory pricing practices on nondairy products; free services, equipment, and other items; and gifts and loans.

SOUTH DAKOTA

Milk Price Control

The South Dakota Department of Agriculture establishes minimum wholesale and retail prices for all fluid milk products.

Standards used to determine the dock and wholesale prices of milk products are the cost of raw milk (determined by Federal milk orders which price all milk eligible for fluid use in the State), and the average cost of South Dakota processors for processing, packaging, and delivery. Retail levels are set at a minimum of 10 percent above the wholesale price.

Regulation of Trade Practices

Trade practice regulations are an important part of the South Dakota price control program. Regulated prohibited practices include sales below cost, rebates, secret discounts, special services and privileges, credit and equipment arrangements, exclusive leases, price discrimination, and loss leaders.

Milk Promotion

South Dakota assesses producers 2 cents per hundredweight on about 83 percent of marketed milk. About 20 percent of these funds are used for in-State promotion; the remaining 80 per-

cent is contributed to the American Dairy Association. Producers may apply for an annual refund within 30 days after January 1.

TENNESSEE

Regulation of Trade Practices

The Tennessee Fair Trade Practice Act is designed to protect producers, processors, and retailers from below-cost selling and certain other tactics that are used to destroy competition and are considered detrimental to the public interest.

Sales below cost are prohibited at wholesale and retail levels. Wholesale cost is determined by normal accounting procedures. Retail cost is based on the invoice price paid by the retailer plus a statutory markup of 8, 10, or 14 percent, depending on the type of service rendered to the retailer by his supplier. These statutory markups are assumed in the absence of a lesser proven cost.

It is permissible to sell below cost when: (1) the price is made in good faith to meet competition, provided the price is cut only once and is not cut below the price of competition; (2) the merchandise is damaged; (3) the merchandise is sold upon final liquidation of any business; (4) the merchandise is sold for charitable purposes or to unemployment relief agencies; (5) a transaction is not in the usual course of business; (6) bids are made in response to invitations from government agencies or institutions; and (7) the merchandise is sold by an officer acting under the direction of any court.

UTAH

Milk Promotion

The Utah Dairy Commission, composed of nine dairy farmers, oversees the promotion, protection, study, research, analysis, and development of markets for distributing Utah's dairy products. Commission members, except for the first members who were appointed to alternating terms by the Governor, are elected by dairy farmers in the State's nine dairy districts. To finance the commission's activities, producers are assessed 0.5 percent of the gross value of their marketed milk.

Legislation and Litigation Since 1968

The Dairy Products Act of 1971 authorizes producer assessments, which began July 1, 1971, to finance the dairy commission and its promotion programs.

VERMONT

Milk Price Control

The Vermont Milk Control Board is empowered to establish prices producers receive for milk eligible for fluid use and resale prices for fluid products. Minimum prices paid producers for milk sold for distribution in Vermont are based upon the Boston Regional Federal order blend price in the 21st zone, plus an added fixed premium. This formula has been used instead of a classified use plan. Minimum wholesale and retail consumer prices are established by applying producer prices to a formula adopted for that purpose.

Regulation of Trade Practices

The Vermont Milk Control Board has the authority to regulate trade practices. Practices prohibited include selling below cost, giving trading stamps with purchase of milk, and giving free merchandise to entice customers.

Milk Promotion

The Dairy Council of Vermont administers the State promotional program. Producers and handlers are each assessed 1.5 cents per marketed hundredweight for its program.

VIRGINIA

Milk Price Control

The Virginia Milk Commission has authority to supervise, regulate, and control all phases of the milk industry in the State and to adopt and enforce all rules it deems necessary to carry out the provisions of the State's milk control law. The commission regulates approximately 92 percent of the fluid milk and cream sold to Virginia consumers. However, slightly more than half the Grade A milk that Virginia producers market is sold and priced under Federal milk

marketing orders. In all commission-defined markets, the commission fixes minimum prices distributors pay producers and the minimum and maximum wholesale and retail prices that may be charged for milk. It also fixes different prices for different grades of milk.

In determining the reasonableness of prices to be paid or charged, the commission is guided by the cost of producing and distributing milk, including compliance with all sanitary regulations; necessary operating, processing, storage, and delivery charges; the prices of other foods; and the welfare of the general public.

Regulation of Trade Practices

The Virginia Milk Commission regulates trade practices that may occur in wholesale and retail transactions. Practices regulated include advertising, tie-in sales, sales below cost, discounts and rebates, and, in general, any practice which may tend to substantially lessen competition in or substantially increase the cost of milk distribution.

WASHINGTON

Milk Promotion

The Washington Dairy Products Commission administers a State promotion program financed by mandatory producer deductions of 4 cents per hundredweight. Funds are used for advertising and to conduct product and marketing research.

WEST VIRGINIA

Milk Promotion

West Virginia conducts advertising and promotional and educational programs on milk. Funds for these activities are appropriated by the legislature.

WISCONSIN

Regulation of Trade Practices

The Wisconsin Dairy Industry Trade Practice Law aims at promoting stable, orderly marketing without fixing prices by prohibiting sales below cost and other unfair trade practices.

Sales at less than cost are permitted when: (1) made in good faith to meet an equally low price of a competitor; (2) made in good faith for the discontinuance of business; (3) goods are damaged; (4) goods are sold under court order; (5) goods are sold under contract to the Federal Government or its institutions. An integral part of the trade practice law is the provision prohibiting price discrimination, which is patterned after the Federal Robinson-Patman Act.

The Wisconsin Unfair Sales Act considers wholesale prices below cost unless they equal or exceed distributor's costs plus 3 percent, and retail prices below cost unless they are at least 6 percent above the wholesale invoice cost.

Milk Promotion

The Wisconsin market development program, which is financed from appropriated funds, includes advertising and marketing research for milk. Wisconsin also has authority to establish a milk promotion program financed from assessments on producers, subject to producer approval.

WYOMING

Milk Price Control

The Dairy Marketing Section of the Wyoming Department of Agriculture regulates prices producers receive for all milk sold to plants and dealers and wholesale prices of fluid products—about 98 percent of marketed milk.

Minimum producer and wholesale prices are determined by a formula which combines the Minnesota-Wisconsin price for manufacturing grade milk, the price of bulk butter (Chicago, Grade A), and the price for spray process nonfat dry milk (Chicago).

Regulation of Trade Practices

Regulations prohibit "inequitable marketing practices," which include: Selling at discount; giving premiums, gifts, or refunds to induce a person to become or remain a customer; offering to rent, repair, or sell any equipment at other than customary commercial rates or fees; selling or offering to sell dairy products below cost; and selling or offering to sell fluid milk within milksheds at prices below established Class I, II, or III prices.

PUERTO RICO

Milk Price Control

Only milk produced on First Class dairy farms is regulated. Such milk accounts for about 85 percent of total production. Wholesale and retail prices are established for all fluid items sold in Puerto Rico.

The basic standard used to determine the level of producer and resale prices is the cost of producing and processing milk.

Regulation of Trade Practices

The Office of Milk Industry Regulation enforces regulations to eliminate speculation, waste, and unfair and destructive trade practices.

Milk Promotion

The Milk Industry Fund promotes the production and consumption of milk. The fund is maintained by mandatory assessments on producers and handlers with each contributing 0.25 cent per quart of nonsurplus milk.

Appendix.—State Milk Control Agencies

ALABAMA

Dr. Wallace Miller, Chairman
Miss Sunshine Wyatt, Acting Exec. Sec.
Alabama Dairy Commission
558 State Office Building
Montgomery, Ala. 36104

CALIFORNIA

Mr. C. B. Christensen, Director
Department of Agriculture
Mr. L. R. Walker, Chief
Bureau of Milk Stabilization
1220 N Street
Sacramento, Calif. 95814

HAWAII

Mr. Frederick C. Erskine, Chairman
Board of Agriculture
1428 South King Street
P.O. Box 5425
Honolulu, Hawaii 96814

LOUISIANA

Mr. Dave L. Pearce, Commissioner
Department of Agriculture
Mr. Jesse H. Cutrer, Jr., Exec. Sec.
Louisiana Milk Commission
Box 44072, Capital Station
Baton Rouge, La. 70804

MAINE

Mr. Andre G. Chabot, Chairman
Mr. Walter B. Steele, Jr., Exec. Sec.
Maine Milk Commission
State House
Augusta, Maine 04330

MASSACHUSETTS

Mrs. Josephine I. Rizzo, Chairman
Mr. Alan Barkin, Acting Director
Milk Control Commission
Commonwealth of Massachusetts
State Office Building
Government Center
100 Cambridge Street
Boston, Mass. 02202

MONTANA

Mr. Lynn M. Martin, Chairman
Mr. K. M. Kelly, Exec. Sec.
Montana Milk Control Board
616 Helena Avenue
Helena, Mont. 59601

NEVADA

Mr. J. Glen Coon, Chairman
Mr. Clarence J. Cassidy, Sec.-
Administrator
Nevada State Dairy Commission
2500 North Valley Road
Reno, Nev. 89502

NEW JERSEY

Mr. Phillip Alampi, Secretary
Department of Agriculture
Mr. W. W. Moffett, Jr., Director
Division of Dairy Industry
P.O. Box 1999
John Fitch Plaza
Trenton, N. J. 08625

NEW YORK

Mr. Frank Walkley, Commissioner
Department of Agriculture and
Markets
Mr. Herbert Kling, Director
Division of Milk Control
State Campus - Building 8
Albany, N. Y. 12226

NORTH CAROLINA

Mr. Neil Bolton, Chairman
Mr. Grady Cooper, Jr., Exec. Sec.
North Carolina Milk Commission
11 South Boylan Avenue
Raleigh, N. C. 27603

NORTH DAKOTA

Mr. Robert Christ, Jr., Chairman
Mr. Martin Mertz, Exec. Sec.
North Dakota Milk Stabilization Board
206½ Sixth Street, Room 5
Bismarck, N. Dak. 58501

OREGON

Mr. Ray Hobson, Administrator
Milk Stabilization Division
Department of Agriculture
Salem, Oreg. 97310

PENNSYLVANIA

Mr. Harry E. Kapleau, Chairman
Morris Blanding, Exec. Sec.
Milk Marketing Board
Commonwealth of Pennsylvania
2301 North Cameron Street
P.O. Box 1575
Harrisburg, Pa. 17120

SOUTH CAROLINA

Mr. Charles A. Shaw, Director
South Carolina Dairy Commission
1015 Main Street
Columbia, S. C. 29201

SOUTH DAKOTA

Mr. William H. Schroeder, Secretary
State Department of Agriculture
(Vacant) Director
Division of Dairy Marketing
Pierre, S. Dak. 57501

VERMONT

Mr. Edward R. Eurich, Commissioner
Mr. W. I. Carr, Director
Department of Agriculture
Montpelier, Vt. 05602

VIRGINIA

Mr. Charles H. Coleman, Administrator-
Chairman
State Milk Commission
Ninth Street Office Building
Ninth and Grace Streets
Richmond, Va. 23219

WYOMING

Mr. James L. Read, Administrative Officer
Dairy Marketing Section
Wyoming Department of Agriculture
P. O. Box U
Douglas, Wyo. 82633

PUERTO RICO

Mr. Felix Roman, Jr., Administrator
Department of Agriculture
Commonwealth of Puerto Rico
Office of Milk Industry Regulation
San Juan, Puerto Rico 00901